

No. _____

**IN THE SUPREME COURT
OF THE UNITED STATES**

**DARIUSZ DOLACINSKI
MARIA DOLACINSKI**
Petitioner-Applicant

v.

BANK OF AMERICA,
Respondent

**Dariusz and Maria Dolacinski Application to Justice Clarence Thomas to
Extend Time to File Petition for Writ of Certiorari to review Judgment of
the 2nd District Court of Appeals, Lakeland, of the State of Florida**

Dariusz Dolacinski
Counsel of Record
Pro Se

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SUMMARY

Petitioner-Applicant Dariusz and Maria Dolacinski respectfully ask Justice Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit, to extend the time for Dariusz and Maria Dolacinski to file a petition for writ of certiorari. The current deadline for the Petitioner-Applicant to file their petition is October 31, 2018, which is ninety days from August 3, 2018, the date when the 2nd District Court of Appeals, Lakeland, Florida (Exhibit A) denied the Defendants' Motion for Clarification, Rehearing, and Rehearing en Banc of the Per Curiam Affirmance and Request for a Written Opinion and Certification of the Court's order. Dariusz Dolacinski, on behalf of the Petitioner-Applicant requests that the deadline be extended by fifty-eight days, so that the new deadline would be Wednesday, December 28, 2018.

The Petitioner-Applicant represent that their rights have been compromised through extraordinary developments regarding the Respondents former Attorney(s) of Record introducing unique unprecedented complexities. This has been further extrapolated especially as they have needed to rely on their own limited resources and research, while their rights have been severely impeded through circumstances having no precedent and introducing multiple complexities including:

1. Proceedings throughout being tainted through the Respondent's former Attorney of Record, Morris Hardwick Schneider (MHS), LLC n/k/a Morris Schneider Wittstadt Va., PLLC (MSW) not having clean hands (Exhibit B).
2. The current Respondent's Attorney of Record being reliant upon the files and information for the former aforementioned Attorney of Record, Morris

Hardwick Schneider [MHS], and therefore being reliant and presenting the Courts with potentially tainted and/or misrepresented evidential material.

3. The Respondent itself arguably also not having clean hands, as has been well reported that Bank of America (along with many other financial institutions) during the period in which the mortgage was first provided was significantly embroiled in the then toxic mortgage and secondary mortgage markets which in turn has led to a number of well-publicized class action initiatives against the Respondent as well as substantial settlements.
4. The current proposed resale of the property, the subject of the mortgage and dispute being reliant upon the validity of a Judicial Judgement of Foreclosure (Exhibit C) that is claimed by the former Attorney of Record and subsequently by the current Attorney of Record, to be a Consent Order, whereas no Consent was ever provided by the Petitioner-Applicant, and despite claims that this Consent was in writing, no evidence of this being provided to the Courts. The Petitioner-Applicant hold that if there was no Consent, then there could not be a valid and/or enforceable Consent Judgement of Foreclosure, and that in turn any proposed sale reliant on the Order in these circumstances would be void.

BACKGROUND

This is a civil action originating from Complaint first filed by the Plaintiff April 11, 2012 relating to a Bank of America mortgage default by the Defendants

on property situated at 7925 Lake Mabel Loop Road, Lake Wales Florida, and more particularly from an alleged 'Consent Final Judgment of Foreclosure' by order of the Circuit Court of the Tenth Judicial Circuit in and for Polk County, Florida on July 10, 2014 (Exhibit C).

Prior to the July 10, 2014 Judicial Judgement Order, the Defendants had retained Attorney, Camille Sebreth, Esq., 31 South Main Street, Suite 1, Winter Garden, Florida to seek resolution through mortgage modification negotiation with the Plaintiff in this matter, the Bank of America. The Plaintiff's Attorney of Record at that time, Morris Hardwick Schneider LLC, were not cooperative and they rejected any form of mortgage modification.

When the mortgage modification was denied by the Plaintiff, it also became evident to the Defendants that in their opinion at the time, Sebreth, their Attorney of Record, was acting contrary to the Defendant's interests and instructions, and that the differences were not able to be resolved. By mutual agreement the Defendant's' Attorney of Record then filed Motion to Withdraw as Attorney of Record (Exhibit D) on July 2, 2014 and copy of Motion was served on the Plaintiff's then Attorney of Record, Morris Hardwick Schneider LLC. On granting of the Motion (Exhibit E), the Circuit Court Clerk also served notice on the Plaintiff's then Attorney of Record on July 7, 2014. Importantly the Withdrawal of Attorney of Record, and the Circuit Court recording of same, noted that all further communication and contact be directed to Dariusz Dolacinski at 7925 Lake Mabel Loop Road, Lake Wales, Florida.

The Defendants at that time, being pro se, had wrongly assumed the scheduled trial of July 10, 2014 would not proceed without representation. The

Final Judgement of Foreclosure action was subsequently tried before the Court on July 10, 2014 and was entered as a Consent Final Judgement of Foreclosure and appointed November 10, 2014 as the property sale date, despite the Defendants not at any time having agreed to any Consent whatsoever to the Order.

The Defendants were never served with any Notice of the Order of Judicial Foreclosure and Notice of Sale and their first knowledge of the order was when a potential buyer came to inspect the property five days before the scheduled sale date.

Further complicating issues and to the detriment of the Defendants, Morris Hardwick Schneider LLC, the Attorney of Record for the Plaintiff, Bank of America, at the time of July 10, 2014 Final Judgement of Foreclosure, the first property sale on November 10, 2014, and for some time later had been acting negligently and fraudulently as subsequently alleged by the Plaintiff.

On August 4, 2014, Morris Hardwick Schneider LLP (Civil Action File No. 2014-CV-250583) (Exhibit F) the Bank of America Attorney of Record, filed a lawsuit for recovery of multi-million dollars allegedly misappropriated by its majority control Managing Partner, Nathan E. Hardwick IV who formally resigned later that month and was subsequently criminally charged. The Defendants hold that the Plaintiff would have been aware of these serious issues, yet still retained the services of the firm.

In a separate, but substantially related, action filed in the United States Bankruptcy Court for the Eastern District of Virginia in Case No. 15-33370-KLP, (Exhibit B) the Plaintiff filed proceedings against their Attorney of Record for

Breach of Contract alleging: negligence, professional negligence, gross negligence, fraudulent billing, setoff and recoupment.

The Defendants hold that the Plaintiff would have been aware at least well before the first property sale date of November 10, 2014 that their Attorney of Record did not have clean hands, and the Defendants further hold that actions by the Plaintiff's Attorney of Record during the term of their engagement and interaction with the Defendants were also impaired through the negligence and arguably through a propensity for over-servicing contributing to the fraudulent billing of the Plaintiff. The Defendants hold that their difficulty in their dealings with the Plaintiff's Attorney of Record, and the Plaintiff's Attorney of Record regularly sending service of documents on the Defendants to a wrong address, and being uncooperative and difficult in the mortgage mediation process demonstrates the negligence that only served to further frustrate the Defendants and their rights while at the same time serving to increase the alleged fraudulent billings to their client, the Plaintiff.

The Defendants hold that the Plaintiff breached its fiduciary duties and was thus negligent when it first became aware of the serious issues regarding Morris Hardwick Schneider LLC, its former Attorney of Record. The Plaintiff conducted no proper review of the conduct of this matter, the representations of its Attorney of Record, and/or the negligence of their Attorney of Record to the detriment of the Defendants and their rights, financial situation, family circumstances, and health.

In the interests of potentially settling the matter the Defendants requested agreement from the Plaintiff to a short sale of the property which on August 12,

2015 was refused by the Plaintiff, Bank of America, through advice from Mary Ward an Officer of the Bank acting in the matter (Exhibit G).

Significantly, in the most recent Court appearance before Honorable Steven L. Selph in the Tenth Judicial Court Circuit on June 2, 2017, the Court dismissed the Defendant's Objection to the Sale, Emergency Motion to Administratively Cancel/Vacate the Foreclosure Sale (Exhibit H). Michael Gelety Esq., on behalf of the Plaintiff's Attorney of Record, in their filing of Answers to the aforementioned Defendant's Objection, clearly seeks to rely upon the claimed 'Consent' of the Defendants and specifically states:

In para 2: "Plaintiff and Defendant reached a resolution and a Consent Final Judgement was entered on July 10, 2014. NOTE: Plaintiff and Defendant freely and voluntarily entered into settlement negotiations. Plaintiff and Defendant both negotiated not pro se but with benefit of counsel."

In Para 3: "Despite this agreement to enter a judgment of foreclosure with a specific sale date..."

In Para 6: "Despite Defendant Dolacinski, while represented by an attorney, specifically agreeing to the entry of a Final Judgement of Foreclosure and entry of a specific sale date...."

In Para 7: "By agreeing in writing, to the entry of a Consent Final Judgment, the Plaintiff is put in the impossible position of needing to address issues that were never brought up during litigation."

In Para 10: "...because the Defendant consented to the entry of a Final Judgement..."

Whereas, Attorney Michael Gelety throughout the Plaintiff's response file on August 1, 2016 for consideration by Honorable Steven L. Selph repeatedly references the defendants agreement or consent to a Final Judgement of Foreclosure and further represents this agreement to be in writing, while providing nineteen pages of attached exhibits, the Plaintiff's Attorney of Record does not include any evidence whatsoever or any copy of such claimed agreement in writing as an exhibit.

Finally, the circumstances of the Defendant Dariusz Dolacinski have continued to deteriorate over the period. His financial position has been detrimentally affected by not only the judgment, but more significantly the protraction of the proceedings; his family situation has dramatically deteriorated with his wife Maria (Co-Defendant) and young daughter returning to Poland; and his health which has deteriorated largely through stress leading to depression and of late several breakdowns. For his ongoing health concerns Dariusz Dolacinski is currently on anti-depression medication and being treated by:

Winter Haven Hospital, Center for Behavioral Health, 1201 First Street South Winter Haven, Florida; and Central Florida Health Care, Lake Wales Free Clinic, 210 Dr J A Wiltshire Avenue, East Lake Wales, Florida.

ARGUMENT

A copy of the 2nd District Court of Appeals, Lakeland, Florida (Case No. 2D17-3082) decision is attached as Exhibit A to this Application.

The Defendants intend to petition this Court for a writ of certiorari to review the 2nd District Court of Appeals judgment and now respectfully asks for additional time to file such petition.

Recognizing that an extension of the time for the filing of a petition for writ of certiorari requires good cause and that requests for extensions of time are not favored, The Defendants respectfully ask Justice Clarence Thomas, as Circuit Justice for the United States Court of Appeals for the Eleventh Circuit, to extend the time for the Defendants to file a petition for writ of certiorari. The Defendant's request that the deadline be extended by fifty-eight days, so that the new deadline would be Wednesday, December 28, 2018. To establish good cause for his request, the Defendants make the following six arguments in favor of extending the deadline.

1. Court Jurisdiction

The Defendant's application satisfies the express procedural requirements of Supreme Court Rule 14.5. This Court would have subject matter jurisdiction to hear the Defendant's petition for a writ of certiorari because the Defendants assert claims under the Free Exercise and Due Process Clauses of the Constitution, which provide federal question jurisdiction. This Court would also have appellate jurisdiction to hear the Defendant's petition for a writ of certiorari because the Defendants timely filed a petition for rehearing *en banc*, which the 2nd District Court of Appeals, Lakeland, Florida (Case No. 2D17-3082) denied and the Defendants now seek to timely file a petition for writ of certiorari.

The judgment that the Defendants seek to review is the 2nd District Court of Appeals decision (Exhibit A) denying the Defendant's Motion for Clarification, Rehearing, and Rehearing en Banc of the Per Curiam Affirmance and Request for a Written Opinion and Certification of the Court's order.

The Defendants file this application more than ten days before the date his petition is due because, as of now and without any extension, the Defendant's petition would be due on October 31, 2018. The Defendants also ask for an extension of time only for themselves, as no other party has need to file a petition for writ of certiorari.

2. Deficient Service of Process:

Strict compliance with the statutory provisions governing service of process is required to obtain jurisdiction over a party.

The Defendants hold that all Service of Process in this matter has historically been deficient and particularly so regarding the service of Notice of Trial for July 10, 2014 and of the Service of copy of the final Judgement of Foreclosure on July 10, 2014. See:

Schupak v. Sutton Hill Assocs., 710 So.2d 707, 708 (Fla. 4th DCA 1998);
Sierra Holding, Inc. v. Inn Keepers Supply Co., 464 So.2d 652, 654 (Fla. 4th DCA 1985); *Baraban v. Sussman*, 439 So.2d 1046, 1047 (Fla. 4th DCA 1983).

This strict observance is required to assure that a defendant receives notice of the proceedings filed. See:

Electro Eng'g Products Co., Inc. v. Lewis, 352 So.2d 862, 865 (Fla.1977).

And also, as noted in:

Haney v. Olin Corp., 245 So.2d 671, 672 (Fla. 4th DCA 1971),

“The major purpose of the constitutional provision which guarantees ‘due process’ is to ensure that when a person is sued, that person has notice of the suit and an opportunity to defend.”

Section 48.031(1)(a), Florida Statutes, which sets forth the requirements for service of process, provides: (1)(a) Service of original process is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents.

In 2004 the Legislature amended the statute to include a requirement of noting the time and date of service on the copy delivered to the person to be served. Section 48.031(5), Florida Statutes, provides: (5) A person serving process shall place, on the copy served, the date and time of service and his or her identification number and initials for all service of process.

Since at least 1971, Florida Rule of Civil Procedure 1.070(e) required that “the date and hour of service shall be endorsed on the original process and all copies of it by the person making the service.” It appears that the statute as amended in 2004 incorporates the long-standing requirement of the rule.

To the knowledge of the Defendants, no case has ever dealt with the failure to include the notation of time of service on the copy of the complaint left with the served party, the Legislature has however deemed it to be a requirement of service. As strict compliance with all of the statutory requirements for service is required, the failure to comply with the statutory terms means that service is defective, resulting in a failure to acquire jurisdiction over the defendant.

3. Misrepresentation of Judicial Final Judgement of Foreclosure

The Defendants hold that the Final Judgement of Foreclosure was not a Consent Judgment as represented by the respective Plaintiff Attorneys of Record throughout the proceedings as they have never provided Consent.

The Defendants hold that the Final Judgement must be void and should be vacated, as the Consent has been misrepresented, and therefore that any judicial property sale Order or right to public sale that is reliant on the validity of such Consent as misrepresented by the Plaintiff to support a Consent Judgement of Foreclosure must also be void and therefore vacated.

4. Tainted and/or Misrepresented Statements in filing by Plaintiff's Attorney of Record

The filing of the Plaintiff's Answers to the Defendant's Objection to the Sale, Emergency Motion to Administratively Cancel/Vacate the Foreclosure Sale contains throughout statements presented as factual regarding the Final Foreclosure Judgment being by Consent. Despite constantly referring to this Consent as being factual as well as being in writing, the Plaintiff's current Attorney(s) of Record in fact has no direct knowledge of any such Consent by the Defendants and is relying purely on the records of the matter from when Morris Hardwick Schneider were the Plaintiff's Attorney of Record. It is clearly demonstrated that Morris Hardwick Schneider did not have clean hands as also evidenced by the action subsequently filed in the United States of America Bankruptcy Court by the Plaintiff against Morris Hardwick Schneider, LLC, n/k/a Morris Schneider Wittstadt (Exhibit B), their former Attorney of Record, alleging among other things, negligence, professional negligence, gross negligence, fraudulent and over charging, yet

Plaintiff's current Attorney of Record, accepts and adopts the questionable misrepresentations of the Plaintiff's former Attorney of Record and presents these as factual to the detriment of the Defendants.

The Defendants hold that without substantiation of their alleged Consent in writing as claimed by the Plaintiff, there cannot be a valid or enforceable Consent Judgement.

5. Consent Judgement Void

The Defendants hold that there being no Consent given by them to any Final Judgement, and that Judgment subsequently having been recorded by the Court as a Consent Final Judgment for Foreclosure, then this Consent Final Judgement of Foreclosure must be void and not enforceable, and further that there can be no property sale that relies of a Final Judgment in which the Plaintiff has misrepresented the Consent of the Defendants is void and should be vacated.

6. Medical Mental Health Condition of Dariusz Dolacinski Pro Se Representing the Defendants

The Defendants further respectfully ask that consideration be given to the current medical condition of Dariusz Dolacinski who has been subject to increased stress over the prolonged process of these proceedings. He has suffered several breakdowns over the past six months and following his last breakdown, and as of recently he is now under medical attention at both Winter Haven Hospital, Center for Behavioral Health, and at Central Florida Health Care, Lake Wales Free Clinic. The current condition of Dariusz Dolacinski would make it extremely difficult, if not impossible, for him to timely file a timely writ of certiorari without being granted the requested extension of time.

CONCLUSION

For those reasons, the Defendants respectfully asks Justice Thomas, as Circuit Justice for the Eleventh Circuit, to extend the time for the Defendants to file a petition for writ of certiorari. The Defendants respectfully request that the deadline be extended by fifty-eight days, so that the new deadline would be December 28, 2018.

This application is submitted on 10/17/2018.

Dariusz Dolacinski

Counsel of Record

Pro Se



/s/ Dariusz Dolacinski

CERTIFICATE OF SERVICE BY MAIL & EMAIL

I HEREBY CERTIFY that a true and correct copy of the Application for Extension of Time to File Petition for Writ of Certiorari has been furnished by mail and email to:

LIEBLER GONZALEZ & PORTUONDO

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/s/ Dariusz Dolacinski

FONT-Century Schoolbook 12pt

I HEREBY CERTIFY that the font used in this Application for Extension of Time to File Petition for Writ of Certiorari is Century Schoolbook 12pt, in compliance with U.S. Supreme Court requirements

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